

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.458 OF 2007

M/s Amalgamated Commercial
Traders Ltd, a company .. Petitioners.

Vs

M/s Arun Fintrade Ltd, Respondent

Mr Yash Patel i/b K.V.Aiyar & Associates, for the
petitioners.
None for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 30th August, 2007.

P.C.:

1. Heard learned counsel for the petitioners.
None appears for the respondents, though served.

2. The petitioners are in the business of giving
inter corporate loans and advances to parties. At
the request of the respondent-company the petitioners
had granted a loan of Rs.37,60,000/- and the said
amount was paid on different dates by different
cheques in March 2004. It appears substantial amount
was repaid by the respondent-company and since there
is a balance of Rs.4,64,141.61 and it has not been
paid, a statutory notice under sections 433 and 434
of the Companies Act was issued by the petitioners on
15.1.2007. By the said notice the respondent-company
was called upon to pay a sum of Rs.4,64,141.61 and

the interest thereto at the rate of 12% per annum. The respondent-company replied the notice by letter dated 22.1.2007 and had agreed with the figures mentioned in the statutory notice and they requested the petitioner to give them 12 months time to clear the balance as they were facing liquidity problems. Until filing of the petition and even till this date, Mr.Patel, learned counsel for the petitioner, submits that they have not paid single a farthing after their reply dated 22.1.2007. Since the amount has not been paid to the petitioner, a company petition for winding up has been instituted. The company petition has been duly served on the company and affidavit of service has also been filed. The company has not responded to the notice of this petition. The circumstances show that there is debt due and payable.

3. However, in order to furnish the respondent with an opportunity to avoid the consequences of the admission of the petition for winding up, it would be appropriate to pass a conditional order permitting the respondent to deposit the principal amount of the invoice. Thereupon, the petitioner would be relegated to the remedy of filing a suit for the recovery of its dues together with interest and the

amount so deposited would be credited to the account of the suit. Hence, the following order:

(i) Within a period of four months from the date of this order, the respondent shall deposit with the Prothonotary & Senior Master of this Court, the amount of Rs.4,64,141.61.

(ii) The petitioners are at liberty to file a suit for the recovery of the loan amount. The petitioner would be at liberty to institute a suit for the recovery of its dues within two months of intimation of deposit furnished by counsel for the respondent;

(iii) The amount deposited shall, upon the institution of the suit, stand transferred to the credit of the account of the suit;

(iv) The amount upon being transferred to the credit of the suit account shall be invested in a fixed deposit of a Nationalised Bank. The petitioners will be at liberty to move the court for directions in regard to the money which is deposited;

(v) In the event, that the Respondent

fails to deposit the amount as directed, the company petition shall stand admitted. The petitioner to advertise the petition in "Free Press Journal", "Nav Shakti" and also in Maharashtra Government Gazette. The petitioner to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges.

(vi) If no suit is instituted by the petitioner within the period stipulated, the respondent would be at liberty to apply for discharge of the security.

4. The company petition is accordingly disposed of in the above terms.

(D.B.BHOSALE, J.)